



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67594; File No. SR-NASDAQ-2012-093)

August 6, 2012

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify NASDAQ's Fee Schedule Governing Order Routing

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify NASDAQ's fee schedule governing order routing.

NASDAQ will implement the proposed change on August 1, 2012. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com>, at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item III [sic] below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is making a minor modification to the schedule governing fees for use of its routing services. Effective August 1, 2012, the NASDAQ OMX PSX ("PSX") facility of NASDAQ OMX PHLX LLC ("Phlx") has increased the fees that it charges for accessing liquidity.³ Accordingly, NASDAQ is making a conforming change to the fee that it charges for routing directed orders to PSX, increasing the charge from \$0.0005 per share executed to \$0.0029 per share executed.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁴ in general, and with Sections 6(b)(4) and (5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to

³ See SR-Phlx-2012-102 (July 31, 2012). In making this change, Phlx undid a pricing change made for July 2012 and reverted to the pricing in effect prior to July 2, 2012. See Securities Exchange Act Release No. 67387 (July 10, 2012), 77 FR 41838 (July 16, 2012) (SR-Phlx-2012-87). Similarly, NASDAQ adjusted its routing fees in July 2012 to reflect the change made by Phlx and is now reverting to the fees formerly in effect. See Securities Exchange Act Release No. 67355 (July 5, 2012), 77 FR 40926 (July 11, 2012) (SR-NASDAQ-2012-079).

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(4) and (5).

NASDAQ is offered on fair and non-discriminatory terms. The change is reasonable because the proposed fee for routing directed orders to PSX reflects the fact that PSX is increasing the fee that it charges NASDAQ with respect to such orders.⁶ The change is consistent with an equitable allocation of fees because it will bring the economic attributes of routing directed orders to PSX more in line with the cost of executing orders there. Finally, the change is not unfairly discriminatory because it applies solely to members that opt to route directed orders to PSX.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ routing facility to route to PSX reflect an increase in the cost of such routing.

⁶ Depending on the listing venue of the security, NASDAQ will be charged either \$0.0019 or \$0.0027 per share executed. NASDAQ believes that it is appropriate to charge a markup with respect to directed orders to reflect the costs of offering routing services and the value of such services. Notably, in all instances NASDAQ charges a markup with respect to the special processing associated with the use of directed orders. NASDAQ further notes that it does not currently charge a markup with respect to non-directed orders that are routed to PSX, so the markup with respect to directed orders provides an opportunity to recoup a portion of the general costs associated with operating a routing service. Although the amount of the markup varies depending on the listing venue of the security, NASDAQ believes that it is not inappropriate to charge a uniform fee for the service of routing directed orders to a particular venue, and further notes that the fee for routing directed orders to PSX is lower than the \$0.0035 per share executed fee for routing directed orders to other venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's routing services if they believe that alternatives offer them better value. The proposed change is designed to ensure that the charges for use of the NASDAQ routing facility to route to PSX reflect an increase in the cost of such routing, thereby ensuring that it does not incur a loss when routing to PSX.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁷ 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-093 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-093. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-NASDAQ-2012-093, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill
Deputy Secretary

[FR Doc. 2012-19629 Filed 08/09/2012 at 8:45 am; Publication Date: 08/10/2012]

⁸ 17 CFR 200.30-3(a)(12).